IN THE

Supreme Court of the United States

October Term, 1971
No. 71-942

ANTHONY OZZANTO and BERNARD POZNER,

Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,

Respondents,

THE PEOPLE OF THE STATE OF CALIFORNIA BY THEIR ATTORNEY, JOSEPH P. BUSCH, JR., DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Real Party in Interest.

Petitioners' Reply Brief in Support of Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District.

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Statement of the Case.

The procedural history and statement of facts in this case are fully set forth in the Petition for a Writ of Certiorari herein, pages 1-13.

Petitioners submit the following points in reply to the arguments raised by the brief of the Real Party in Interest, Joseph P. Busch.

This Court Has Jurisdiction to Hear This Matter.

A final judgment has been rendered which is now reviewable by this Court. This action is based upon a proceeding for a Writ of Prohibition. That Writ has been denied, as was hearing by the California Supreme Court.

A decision of the highest state court which finally disposes of a Writ of Prohibition is a final judgment, reviewable by this Court. *Madruga v. Superior Court*, 346 U.S. 556; *Rescue Army v. Municipal Court*, 331 U.S. 549; *Bandini Petroleum Co. v. Superior Court*, 284 U.S. 8.

A prohibition proceeding is a separate and independent suit, relative to the underlying criminal prosecution, and a judgment denying the writ of prohibition is final. *Bandini v. Superior Court*, 346 U.S. 556; *Rescue Army v. Municipal Court*, 331 U.S. 549. Even a denial of the writ without opinion is final and reviewable by this Court. *Michigan Central Railroad Company v. Mix*, 278 U.S. 492.

This Is an Appropriate Case for Consideration Upon Writ of Certiorari.

The brief of the Real Party in Interest cites four cases for the proposition that this case "is not appropriate for a present review on writ of certiorari". None of those cases, however, considered the appropriateness of review by writ of certiorari. Rather, they all held that a Federal District Court action for an injunction or declaratory judgment prohibiting prosecutions by state officials is not appropriate except in extraordinary circumstances. *Younger v. Harris*, 401 U.S. 37; *Samuels v. Mackell*, 401 U.S. 66; *Boyle v. Landry*, 401 U.S. 77; *Perez v. Ledesma*, 401 U.S. 82.

The Court, in *Perez v. Ledesma,* said that ". . . such federal interference with a state prosecution is improper. The propriety of arrests and the admissibility of evidence in state criminal prosecutions are ordinarily matters to be resolved by state tribunals . . . *subject, of course, to review by certiorari or appeal in this Court* or, in a proper case, on federal habeas corpus". *Perez v. Ledesma,* 401 U.S. 82, 84-85. (Emphasis added.) Petitioners here seek precisely such review by certiorari, and not an injunction. Their Petition for such a writ is appropriate.

For the above reasons, Petitioners respectfully request that their petition be granted.

Respectfully submitted,

ALVIN HIRSCH,
Counsel for Petitioners.